

1 Jeffery L. Caufield (SBN 166524)
jeff@caufieldjames.com
2 Kenneth E. James (SBN 173775)
ken@caufieldjames.com
3 Matthew D. McMillan (SBN 262394)
mattm@caufieldjames.com
4 CAUFIELD & JAMES, LLP
2851 Camino Del Rio South, Suite 410
5 San Diego, California 92108
Telephone: 619-325-0441
6 Facsimile : 619-325-0231

7 Attorneys for Defendants TaxMasters,
Inc. and TMIRS Enterprises, Ltd.
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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 JEFFERY DELONG and DENNIS
12 HOLMES, individually and on behalf
13 of all others similarly situated,

14 Plaintiffs,

15 vs.

16 TAXMASTERS, INC., a Nevada
17 Corporation, TMIRS ENTERPRISES,
18 LTD., a Texas Partnership, and DOES 1
19 through 50, inclusive,

20 Defendants.
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Case No: CV11-01431-ODW-AGR

MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF TAXMASTERS' EX PARTE
APPLICATION FOR ORDER
SHORTENING TIME FOR
HEARING TAXMASTERS'
MOTION FOR CLARIFICATION

Date: TBD

Time: TBD

Courtroom: 11

Judge: Hon. Otis D. Wright, II

Action Filed: February 16, 2011

I. INTRODUCTION

TaxMasters respectfully requests that this Court hear the motion for clarification on shortened time because TaxMasters will be irreparably prejudiced if not permitted to oppose Plaintiffs' arguments on the jurisdictional amount in controversy. TaxMasters is requesting that the Court clarify the Order to Show Cause re: Amount in Controversy issued on October 31, 2011 (the "Order") to allow TaxMasters to file a ten (10) page opposition brief by November 21, 2011. If the Court does not hear TaxMasters' motion now, TaxMasters will be deprived of due process and fundamental fairness as it will forever lose its right to oppose Plaintiffs' contentions. Good cause therefore exists because a regularly noticed motion will not be heard before November 14 when Plaintiffs are to submit their additional briefing.

II. GOOD CAUSE EXISTS FOR EMERGENCY RELIEF

A. Legal Standard

An ex parte motion should be granted where the moving party's cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures and where the moving party is not at fault in creating the need for ex parte relief. Mission Power Eng'g Co. v. Continental Cas. Co., 883 F. Supp. 488, 492 (C.D. Cal. 1995). Both requirements are met in the instant case.

B. TaxMasters Will Be Irreparably Prejudiced If The Court Does Not Hear TaxMasters' Motion Before November 14, 2011

Good cause exists because TaxMasters will be irreparably prejudiced if the Court does not hear TaxMasters' motion requesting permission to oppose Plaintiffs' newly-asserted arguments. See, Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975). The Order directs Plaintiffs to file additional briefing, but is silent on whether TaxMasters is permitted to file an opposition as the Order neither expressly allows nor disallows TaxMasters from doing so. (See, Declaration of Matthew D. McMillan in Support of TaxMasters' Ex Parte Application filed

1 concurrently herewith (“Ex Parte McMillan Decl.”) at ¶ 3, Ex. 1). If TaxMasters is
 2 not allowed the opportunity to file an opposition brief, then TaxMasters will be
 3 unfairly deprived of due process as it will forever lose its right to contest this
 4 fundamental element of class certification. Thus, it is essential that the Court hear
 5 TaxMasters’ motion before November 14, 2011 and clarify the Order as so
 6 requested. A regularly noticed motion will not be heard in time and any
 7 opportunity for TaxMasters to oppose Plaintiffs’ contentions will be lost.

8 Therefore, good cause exists for the Court to hear TaxMasters’ motion for
 9 clarification on shortened time.

10 **C. TaxMasters Is Without Fault In Creating The Need For Ex Parte**
 11 **Relief**

12 Good cause also exists because TaxMasters is without fault in creating the
 13 need for this emergency relief. The Court issued the Order earlier this week on
 14 October 31, 2011. TaxMasters has promptly sought clarification of the Order, and
 15 thus is without fault in creating the need for emergency relief.

16 TaxMasters’ ex parte application should therefore be granted because good
 17 cause exists for emergency relief.

18 **III. TAXMASTERS PROVIDED NOTICE IN ACCORDANCE WITH**
 19 **LOCAL RULES 7-19 AND 17-19.1**

20 TaxMasters detailed the substance, date and time of the instant ex parte
 21 application, and the substance of its proposed motion for clarification in a letter to
 22 Plaintiffs’ counsel dated November 3, 2011. (Ex Parte McMillan Decl. at ¶ 4, Ex.
 23 2). Plaintiffs’ counsel responded on November 4, 2011, but refused to indicate
 24 whether Plaintiffs will oppose the instant application or motion for clarification.
 25 (Ex Parte McMillan Decl. at ¶ 5, Ex. 3). Plaintiffs’ counsel also refused to indicate
 26 whether they would stipulate to shortened time. Id.

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